

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4171 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DINESHBHAI ISHWARLAL DANI

Versus

DIRECTOR OF ACCOUNTS AND TREASURY (PENSION SECTION)

Appearance:

MR AN PATEL for Petitioner
MR DA BAMBHANIA for Respondent No. 1
MR RM DESAI for Respondent No. 2
NOTICE SERVED for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/05/98

ORAL JUDGEMENT

This petition arises out of the claim of the petitioner for pension for the services rendered by him as a Secondary School Teacher for the period from 1st July, 1956 to 1st August, 1983. The petitioner took up the employment as a Secondary School Teacher in Non-Government Grant-in-Aid School from 1st July, 1956,

before he attained majority. The petitioner attained majority on 12th February, 1958. Even thereafter, petitioner continued in service as a Secondary School Teacher in one or the other Non-Government Grant-in-Aid Secondary School. The petitioner thus continuously served as a Secondary School Teacher from 1st July, 1956 to 1st August, 1983. On his retirement, he received pension and other retirement benefits in accordance with law. However, the petitioner's service for the period from 1st July, 1956 to 11th February, 1958 i.e. service rendered by him before he attained majority has not been treated as pensionable service and that period has not been counted for the purpose of pension. Feeling aggrieved, on 17th February, 1987, the petitioner made a representation to the District Education Officer-respondent No.3 herein. The petitioner relied upon the Government Resolution issued on 7th April, 1977, in support of his claim. It appears that the said representation has neither been considered nor decided by the respondent No.3. Feeling aggrieved, the petitioner has preferred the present petition.

2. The petitioner has placed sole reliance upon the Government Resolution dated 7th April, 1977 (Annexure 'B' to the petition) and has contended that the period of Boy-Service rendered by a government servant is considered to be a pensionable service and all provisions regarding payment of pension to the government servant apply to the teachers serving in the Non-Government Grant-in-Aid School mutatis mutandis.

3. Neither of the respondents have controverted the facts stated in the petition. I am told that the Boy-Service means the services rendered by a person prior to his attaining majority. Thus, it is undisputed that petitioner did render Boy-Service for the period from 1st July, 1956 to 11th February, 1958 and the said service has not been recognised as pensionable service for the purpose of computation of pension payable to the petitioner.

4. Be it noted that the Government Resolution dated 7th April, 1977, was issued in connection with the earlier resolution dated 24th February, 1966, which is not placed before the court. It is, therefore, not possible to cull the context in which the instructions were issued under the said resolution of 7th April, 1977. However, I am of the view that, even if, under the said resolution, the Boy-Service were considered to be a pensionable service, the same being contrary to the statutory rules, cannot be given effect to. Provisions

governing the pension payable to the government servant are contained in the Revised Pension Rules, 1950. Rules 41 and 42-A of the said rules expressly exclude the period of Boy-Service rendered by government servant from pensionable service. Rule 41 of the said rules in so far as is relevant for the present matter provides, inter-alia, that, "qualifying service means and includes all services rendered on a regular establishment in any capacity whether temporary or permanent, interrupted or continuous, but it shall not include Boy-Service." Rule 42-A of the said rules provides that, "in respect of all classes of government servant retiring after 1st April, 1966, services excluding Boy-Service rendered from the date of entry in the service qualifies for pension." In view of the above referred express provisions excluding Boy-Service rendered by government servant from pensionable service the petitioner's claim for counting the Boy-Service rendered by him for the purpose of pension cannot be accepted.

5. Petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

syed*